

SB1278



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1278

Introduced 2/17/2015, by Sen. Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

35 ILCS 5/909.1 new
35 ILCS 5/911.3
735 ILCS 5/12-703.5 new

Amends the Illinois Income Tax Act. Provides that the Department of Revenue shall garnish a tax refund payable to a judgment debtor and instead remit the refund to the judgment creditor. Adds provisions governing the procedure for garnishment of tax refunds. Directs the Department to adopt rules to implement these provisions. Provides that specified refund withholding requests take priority over a garnishment order. Makes a corresponding change in the Code of Civil Procedure. Effective January 1, 2016.

LRB099 05880 HEP 25928 b

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Income Tax Act is amended by
5 changing Section 911.3 and by adding Section 909.1 as follows:

6 (35 ILCS 5/909.1 new)

7 Sec. 909.1. Garnishment of refunds.

8 (a) As used in this Section:

9 (1) "Debt" means any amount due and owing under a
10 judgment.

11 (2) "Debtor" means any person or legal entity who owes
12 money to another, if:

13 (A) the debt has been reduced to a judgment in this
14 State; and

15 (B) the judgment has not been:

16 (i) satisfied by court order;

17 (ii) set aside by court order; or

18 (iii) discharged in bankruptcy.

19 (3) "Refund" means a refund of overpaid income taxes
20 imposed by the State of Illinois.

21 (b) If a debtor owes a debt, the judgment creditor may, as
22 provided in this Section:

23 (1) have the Department garnish an unpaid refund

1 payable to the debtor; and

2 (2) have the refund applied against the judgment debt.

3 (c) To obtain a garnishment under this Section, a judgment
4 creditor must obtain a garnishment order, under Part 7 of
5 Article XII of the Code of Civil Procedure, naming the
6 Department as garnishee. The judgment creditor shall provide
7 the garnishment order to the Department. Upon receipt of the
8 garnishment order, the Department shall do the following:

9 (1) Calculate the total amount available to be refunded
10 to the debtor for the tax year indicated in the order.

11 (2) Prepare a verified disclosure that identifies the
12 amount of the refund available after subtracting any
13 setoff, counterclaim, or other demand of the State against
14 the debtor.

15 (3) Serve a copy of the verified disclosure described
16 in item (2) of this subsection on:

17 (A) the judgment creditor or the judgment
18 creditor's representative; and

19 (B) the debtor or the debtor's representative.

20 (d) The Department shall deposit the amount available for
21 garnishment under the terms of the order with the judgment
22 attorney of record in the garnishment action, or, if the
23 judgment creditor is not represented by an attorney, with the
24 judgment creditor or the creditor's designee.

25 (e) If 2 or more garnishment orders are received by the
26 Department for the same debtor, the Department shall give

1 priority to the garnishment order that is received first by the
2 Department. The Department shall process each garnishment in
3 order of the date of receipt until the refund of the debtor has
4 been applied in its entirety. After the debtor's refund has
5 been applied in its entirety under a garnishment under this
6 Section, the Department shall:

7 (1) prepare a verified disclosure in the manner
8 described in paragraph (2) of subsection (c) of this
9 Section; and

10 (2) serve a copy of a verified disclosure in the manner
11 described in paragraph (3) of subsection (c) of this
12 Section, stating that there is no remaining refund to
13 garnish on any remaining garnishment orders not satisfied.

14 (f) A judgment creditor must pay to the Department a
15 processing fee of \$5 that is chargeable to the debtor for each
16 garnishment order under this Section provided to the
17 Department. The judgment creditor must pay the fee at the time
18 the garnishment order is provided to the Department.

19 (g) The Department's liability to the plaintiff under a
20 garnishment order under this Section is limited to the amount
21 of the refund due to the debtor for the period the garnishment
22 order is in effect, less any setoff, counterclaim, or other
23 demand of the State against the debtor. After the Department
24 has deposited the amount available under subsection (d) of this
25 Section, the Department has no further liability in the matter
26 unless:

1 (1) a garnishment order is received by the Department
2 for a subsequent tax year; or

3 (2) the amount deposited by the Department under
4 subsection (d) of this Section is in question.

5 (h) The Department shall adopt rules to implement this
6 Section.

7 (35 ILCS 5/911.3)

8 Sec. 911.3. Refunds withheld; order of honoring requests.

9 The Department shall honor refund withholding requests in the
10 following order:

11 (1) a refund withholding request to collect an unpaid
12 State tax;

13 (2) a refund withholding request to collect certified
14 past due child support amounts under Section 2505-650 of
15 the Department of Revenue Law of the Civil Administrative
16 Code of Illinois;

17 (3) a refund withholding request to collect any debt
18 owed to the State;

19 (4) a refund withholding request made by the Secretary
20 of the Treasury of the United States, or his or her
21 delegate, to collect any tax liability arising from Title
22 26 of the United States Code;

23 (4.5) a refund withholding request made by the
24 Secretary of the Treasury of the United States, or his or
25 her delegate, to collect any nontax debt owed to the United

1 States as authorized under subsection (i-1) of Section 10
2 of the Illinois State Collection Act of 1986;

3 (4.6) a refund withholding request to collect any debt
4 owed to a unit of local government, school district, or
5 public institution of higher education collected under an
6 intergovernmental agreement entered into under Sections
7 10.05 and 10.05d of the State Comptroller Act;

8 (5) a refund withholding request pursuant to Section
9 911.2 of this Act; ~~and~~

10 (6) a refund withholding request to collect certified
11 past due fees owed to the Clerk of the Circuit Court as
12 authorized under Section 2505-655 of the Department of
13 Revenue Law of the Civil Administrative Code of Illinois;
14 and -

15 (7) a garnishment order under Section 909.1 of this
16 Act.

17 (Source: P.A. 97-269, eff. 12-16-11 (see Section 15 of P.A.
18 97-632 for the effective date of changes made by P.A. 97-269);
19 97-632, eff. 12-16-11.)

20 Section 10. The Code of Civil Procedure is amended by
21 adding Section 12-703.5 as follows:

22 (735 ILCS 5/12-703.5 new)

23 Sec. 12-703.5. Garnishment of tax refunds. Notwithstanding
24 any other provision of this Part, if the garnishee is the

1 Department of Revenue under Section 909.1 of the Illinois
2 Income Tax Act, the garnishment of any tax refund on behalf of
3 a judgment creditor under this Part shall be accomplished in
4 accordance with the rules adopted by the Department.

5 Section 99. Effective date. This Act takes effect January
6 1, 2016.